

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 04-CR-81013
HON. GEORGE CARAM STEEH

D-1 MICHAEL AYOUB,

Defendant.

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ORDER DENYING DEFENDANT'S MOTION
TO DISMISS DUE TO PRE-INDICTMENT DELAY (#31)

Defendant was indicted on December 9, 2004 on one count of being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1), and one count of possession with intent to distribute marijuana, 18 U.S.C. § 841(a)(1). The charges arose from a warrantless search of defendant's father's Dearborn, Michigan home on August 11, 2004. Defendant moves for dismissal under Federal Rule of Criminal Procedure 48 arguing the delay from the August 11, 2004 search to the December 9, 2004 indictment was intentional and unnecessary, and prejudiced defendant's due process rights in that "witnesses may not have clear memories of the events or may be unable to locate." Defendant's August 4, 2005 Brief, at 2.

Defendant's motion to dismiss is, at best, conclusionary. Defendant does not identify a specific material witness affected by the less than four-month delay between the August 11, 2004 search and December 9, 2004 indictment. The Sixth Circuit has held that

a witness's loss of memory as the result of pre-indictment delay is insufficient as a matter of law to establish prejudice warranting dismissal. United States v. Wright, 343 F.3d 849, 860 (6th Cir. 2003). Defendant's argument that he may not be able to locate unspecified witnesses due to the delay fails to satisfy his heavy burden of proving that the four-month delay caused actual prejudice. Id. Accordingly,

Defendant's motion to dismiss based on pre-indictment delay is hereby DENIED.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: August 23, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on August 23, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk